

# Citizens' Utility Ratepayer Board

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Testimony on Behalf of the Citizens' Utility Ratepayer Board  
By Steve Rarrick, Staff Attorney  
Before the House Energy and Utilities Committee  
Re: House Bill 2637  
January 24, 2008

Chairman Holmes and Members of the Committee:

Thank you for the opportunity to appear before you this morning on behalf of the Citizens' Utility Ratepayer Board (CURB). My name is Steve Rarrick and I am an attorney with CURB.

The primary objective of House Bill 2637 (page 8, line 28) is to remove the price cap protections for the basic residential line and up to four business lines (basic local service). CURB opposes the removal of price cap protection for basic local service for the same reasons we urged the legislature to include this continued protection when price deregulation was passed in 2006.

CURB has asked AT&T for information on how many subscribers it has with only a basic residential line and long distance and/or ala carte vertical services, but has been advised that AT&T considers this information confidential. However, information gathered during the price deregulation application by AT&T in 2005 indicated the following:

- Competitors' share of the stand-alone residential market was 2% compared to SBC's near monopoly 98% share.<sup>1</sup>
- 25.06%, 23.20%, and 23.3% of SBC's Kansas City, Wichita, and Topeka subscribers, respectively, subscribed to basic residential access line service only.<sup>2</sup>
- A significant number of residential consumers purchased only one vertical service and the competitors offering vertical service did so only in bundles rather than on a stand-alone basis.<sup>3</sup>
- 12.65% of Kansans were elderly, 14.75% were disabled, and 12.1% were impoverished.<sup>4</sup>

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<sup>1</sup>June 27, 2005 Order, at ¶ 101.

<sup>2</sup>June 27, 2005 Order, at ¶ 186.

<sup>3</sup>June 27, 2005 Order, at ¶ 102.

<sup>4</sup>June 27, 2005 Order, at ¶ 186.

As noted by the Kansas Corporation Commission (KCC) in 2005, the relatively vulnerable positions of the elderly, disabled, and impoverished should be considered to ensure they have access to universal service at an affordable price as required by K.S.A. 66-2001(a).<sup>5</sup>

Under the price deregulation amendments to K.S.A. 66-2005 passed in 2006, bundled telephone services are price deregulated statewide, and nearly all services in exchanges with more than 75,000 lines (Kansas City, Topeka, and Wichita) have been price deregulated. For all other exchanges, AT&T and Embarq are able to obtain price deregulation by merely demonstrating there are 2 unaffiliated carriers, one of which is facilities-based, providing service to more than one customer in the exchange. This test is easily met, as some of the “competitors” identified by AT&T in the 20-plus exchanges price deregulated under this statute only narrowly passed the requirement that they provide service to more than one customer. In one of the price deregulated exchanges, one of the required “competitors” publicly admitted to KCC Staff that its wireless coverage in the community was, in its own words, “poor at best.” Despite this admission, the exchange was price deregulated because it met the statutory minimum of two unaffiliated providers providing service to more than one customer.

The reality is that AT&T has achieved price deregulation of most of its services. However, the 2006 legislature wisely chose to continue to protect residential and small business basic local service with price cap protection. CURB urges this Committee to continue price cap protection for basic local service that the poor, the disabled, and the elderly use for contacting doctors, schools, and friends and family, and that small businesses use for conducting business. Basic local service is the primary service in the definition of universal service in K.S.A. 66-1,187 (p), and is a service that should not be price deregulated to ensure that “every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price.” K.S.A. 66-2001(a).

Passage of this bill will result in higher prices for residential and small businesses who subscribe to basic local service. Consumers and small businesses with less than four lines subscribing to basic local service do not offer the lucrative opportunities to competitive companies that result in real competition. Those consumers and small businesses will lose the protections of price cap regulation under this bill, and will pay higher prices as a result.

In the event the Committee decides to approve AT&T’s request to eliminate price cap protections for basic local service for consumers and small businesses, CURB is concerned the proposed sunset language at page 8, line 28, could be interpreted as applying not only to sub-paragraph (F), but also the exchange-wide uniform pricing protections contained in sub-paragraph (G). As a result, if the Committee decides to eliminate the price cap protections contained in sub-paragraph (F), CURB urges the Committee to simply strike subsection (F) to make it clear the exchange-wide uniform pricing protections contained in sub-section (G) remain in place. It is my understanding that AT&T did not intend to eliminate sub-section (G) with this proposal, and therefore does not oppose CURB’s alternative proposal.

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<sup>5</sup>June 27, 2005 Order, at ¶ 186.

If the Committee decides to approve AT&T's request to eliminate price cap protections for basic local service, CURB also urges the Committee to amend the bill to detariff all price deregulated services and specify that price deregulated services no longer have the protections of the filed rate doctrine or any limitations of liability that may have been approved in tariffed services. The immunity of the filed rate doctrine and the limitations of liability that are approved in tariffed services should not apply to carriers who are no longer price regulated.

CURB supports the provisions at pages 12-13 of House Bill 2637, which would amend K.S.A. 66-2006 to allow automatic enrollment in the Kansas Lifeline Service Program for persons designated by the Department of Social and Rehabilitation Services (SRS) as participating in qualifying programs under the Lifeline Program. This should increase enrollment in the Lifeline program in Kansas. Lifeline enrollment in Kansas is woefully low in relation to the number of Kansans who qualify for the program. The automatic enrollment proposed by this bill is long overdue, and should not be tied to AT&T's request to price deregulate basic local service.

It is important to note, however, that there is a segment of Kansans who qualify for Lifeline but will not appear on any SRS list. Many Kansans do not participate in any qualifying programs even though they may qualify for them. We need to find a way to reach these Kansans through public service announcements and/or carrier advertising to obtain greater Lifeline participation by those who qualify.

CURB does not oppose the provisions at page 13, lines 32-42, which would require the KCC to approve a limited Lifeline Eligible Telecommunications Carrier (ETC) designation. However, as a matter of policy, CURB doesn't understand why this limited Lifeline ETC designation should be limited to wireline facilities-based carriers and not available for all carriers (including wireless carriers) that can "meet all other ETC eligibility requirements." If the policy goal is to promote Lifeline participation and to level the playing field for all carriers, the Committee should strike the words, "wireline (CMRS)," at page 13, lines 34-35.

On behalf of CURB, I urge you to vote against the provisions of House Bill 2637 that remove price cap protections for the basic residential line and up to four business lines (page 8, line 28). Kansans deserve price cap protection for basic local service. If you decide to eliminate this last line of price cap protection, CURB urges the Committee to detariff price deregulated services and remove the protections of the filed rate doctrine and any limitations of liability that apply to tariffed and price regulated telephone services.

CURB urges you to pass the provisions of the bill related to automatic Lifeline enrollment. Finally, if the Committee believes a limited Lifeline ETC designation is appropriate, CURB urges the Committee to adopt CURB's suggested amendment to level the playing field for all carriers.